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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,078	11/29/2000	Paul A. Dvorak	00-422	9640

719 7590 02/25/2003

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PEORIA, IL 616296490

EXAMINER

UNDERWOOD, DONALD W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/726070

Applicant(s)

Dvorak et al

Examiner

Underwood

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <sup>3</sup>/<sub>1</sub> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/23/02
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27, 29 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27, 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3652

### Detailed Action

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/27/02 has been entered.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 9, 11, 16, 18 and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wallberg.

The lower end of 9 in figure 1 comprises a latch member which moves substantially vertical.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

Art Unit: 3652

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg in view of Doering et al.

It is well known to use slots in connections as shown by Doering at 69. This arrangement prevents binding. It would have been obvious to provide a slot as claimed in Wallberg in view of the teaching in Doering.

7. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg.

It is conventional to provide various controls on a construction machine to divert hydraulic fluid to various cylinders from the main hydraulic circuit to perform different functions. This arrangement cannot serve as a basis for patentability.

8. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg in view of Jones or Horton.

It would have been obvious to divert fluid from the lifting cylinders in Wallberg to the latch cylinder in view of the teaching in either Jones or Horton.

9. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg.

Art Unit: 3652

It is conventional to control the cylinders on a construction machine together by using one handle. The examiner takes notice of this convention. It would have been obvious to control the cylinders in Wallberg with one handle.

10. Claims 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg.

The difference between the elements in claim 19 and Wallberg is the location of the pivots for 9 and 6 on pivot member 7. Applicants' points are switched versions of pivots for 9 and 6. Such a switched arrangement provides no unobvious result over the arrangement in Wallberg and as such is deemed an obvious alternate design arrangement.

Regarding claim 21, the remarks in paragraph 9 above are herein repeated.

Regarding claim 26, the remarks in paragraph 8 above are herein repeated.

11. Claims 1-7, 9, 10 and 11-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albright or Youngers in view of Wallberg.

It would have been obvious to substitute for the hydraulic actuator in Albright separate cylinders pivoted to each of 54 and 56 as claimed or add cylinders to Youngers in view of the teaching in Wallberg.

Regarding claims 12 and 21, the remarks in paragraph 9 above are herein repeated.

Regarding claims 10, 17 and 26, the remarks in paragraph 8 above are herein repeated.

Art Unit: 3652

Regarding claim 19, the remarks set forth in paragraph 10 above are therein repeated.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Albright or Youngers in view of Wallberg as applied to claim 1 above, and further in view of Jones or Horton.

It would have been obvious to divert fluid from the lifting cylinders in Albright or Youngers to the latch cylinders in view of the teaching in either Jones or Horton.

13. Applicants' arguments that his latch member moves substantially vertical and those in Wallberg, Albright and Youngers do not have been carefully considered but <sup>are</sup> ~~is~~ not deemed persuasive. The slot in 10 in Wallberg is deemed to guide latch member 9 in a substantially vertical direction as do 36 in Albright and 190, 151 in Youngers.

14. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 3652

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication should be directed to D. Underwood at telephone number (703) 308-1113.

Underwood/kl  
February 20, 2003

*Ronald W. Underwood* 02/24/03  
RONALD W. UNDERWOOD  
PRIMARY EXAMINER